

Workers' Compensation Advisory Committee (WCAC)

Meeting Minutes

September 13, 2004

Introductions:

Present:

Committee Members:

Business Representatives: Amber Carter, Association of Washington Business; Jon Warling, Mon-Jon Orchards; Tom Kwieciak, BIAW, for Mike Sotelo

Labor Representatives: Owen Linch, Joint Council of Teamsters No. 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO

Self-Insured Employers' Representative: Dave Kaplan, WSIA, for vacant seat

Self-Insured Workers' Representative: Ellie Menzies, Service Employees State Council (absent)

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals

Chair: Bob Malooly

Recorder: Laurie Jenkins

Presenters: Bob Malooly, Bill Vasek, Gary Franklin, Will Hollingworth, and Tom Egan

Guests: Vickie Austin, Amy Brackenbury, Amber Carter, Holly Chisa, Nancy Dicus, Jan Gee, Jeannie Gorrell, Tammie Hetrick, Will Hollingworth, Dave Kaplan, Carolyn Logue, Tom Kwieciak, Kim McIsaac, Sharon Morris, Jill Reinmuth, Jennifer Strus, Michael Temple

L&I Staff: Molly Belozor, Kim Contris, Sandy Dziedzic, Gary Franklin, Tom Goldsby, Heather Grob, Kathy Kimbel, Ernie LaPalm, Suzanne Mager, Mark Mercier, R.T. Nelson, Frank Romero, Cindy Ranger, Lisann Rolle, Nicole Runnels, Judy Schurke, Jean Vanek, Bill Vasek, Tammie Wilson

Review/Approval of April 5, 2004 Meeting Minutes – The first order of business was approval of the April 5, 2004 meeting minutes. The minutes were approved as written.

Issues for Discussion – Bob Malooly

Bob announced the committee would now address several issues including: priorities of the workers' compensation system, funding priorities and itemization of rates. A discussion ensued. The following questions were posed:

Business remarked there was a general feeling that premiums should pay for workers' compensation, based on comments received during the last legislative session. They felt clear priorities need to be established, and the funding for these priorities must be examined. Exploring the Oregon model and providing itemized workers' compensation statements were several ideas expressed.

Labor asked Business how much detail they envisioned?

Business responded that a line-item itemization was not necessary, but at least a general sense of how the funds were expended would be desired. Business asked the department what type of administrative changes would be required to make such a change?

Bob Malooly agreed that the agency could do a better job of communicating to employers, and informed the committee that the department is currently developing an annual report. He explained that the department envisioned this report will be sent to employers, posted on the agency website, and summarized on annual rate notices. There is insufficient time to prepare this new document for this year's rate notices, so the annual report is planned for next year. A discussion ensued and several questions were posed:

Business asked if the proposed annual report would be available for the committee to see prior to the December 2004 meeting?

Labor stated they were not enthusiastic about either the proposed annual report or the Priorities of Government initiative.

Business disagreed with Labor's position. Business believed that both vehicles were important and could possibly assist the committee in its role to advise the Department.

Labor stated that all projects are critical. Preventing injuries saves having to treat them. Implementation of an itemized list of priorities would not only create an artificial sense of priorities, but would also be cumbersome for the department. Labor stated they would like to further discuss funding mechanisms with business representatives.

Business requested a small group meeting in a few weeks — well in advance of the December meeting.

Bob Malooly stated the department would be happy to facilitate and support this discussion. Robbie Stern and Amber Carter will coordinate the date and location.

Retrospective Accuracy of Loss Ratio Projections for Ratemaking – Bill Vasek

Bill Vasek explained that ratemaking accuracy in the Accident and Medical Aid Funds is difficult and depends primarily on the accuracy of the loss ratio projection. The loss ratio is the ratio of losses (or benefits) incurred to the premiums earned (without regard to retro refunds). He reminded the committee that the loss ratio projection is based on prior years, and guided the committee through several slides, pointing out patterns in the Accident and Medical Aid Funds. Using similar current major assumptions as in the past, for accident years 2000-2003 (as of March 31, 2004), the Accident Fund current loss ratio estimate is higher than the original estimate used in all years, in contrast to the Medical Aid Fund where the current estimate is lower in each year. This is due to the unfavorable (worse than originally assumed) loss trends in the Accident Fund and favorable (better than originally assumed) loss trends in the Medical Aid Fund.

Given this information, Labor questioned whether the department should have shifted more funds from the Accident Fund to the Medical Aid Fund.

Business stated the department should consider doing something different with seasonal worker claims and shared a personal case concerning a seasonal worker as an example for the committee.

Bob Malooly stated the Department launched the fraud and abuse unit to investigate questionable cases.

Business then asked how the breakeven rate was interpreted?

Bill explained that the breakeven rate is just the benchmark and that the department has in the past nine years taken rate increases less than the breakeven rate. The department looks at the breakeven rate, examines the financial conditions, and then considers what is appropriate to maintain solvency, given favorable contingency reserves. He explained that it is inappropriate for the department to just

look at the rate taken to determine if we have successfully projected rates. We take the lowest responsible rate we can.

Business asked if the same assumptions were in place for 2004?

Bill responded that different assumptions were used for ratemaking (comparing 2004 to 2005).

Labor asked whether any adjustments were made for 2005?

The Self-Insured Employers' representative inquired whether it was possible to determine what drove costs?

Labor asked for an explanation of the assumptions made for adopting the 3.7 rate increase.

Bob replied that given the experience and trends outside of workers' compensation, it looked to be pushing the lower limit further than we were comfortable. We are in cyclical medical inflation. Whereas the medical growth is assumed to be 5% in 2004, maybe in 2006 we will need a higher growth rate assumption for 2006. Right now we don't know. The national medical trends are disturbing, so going to a four percent rate increase seemed too low. However, given the contingency reserve is higher than anticipated due to gains in equities, we felt safe. We are doing in-house activities, like return-to-work, which we hope will dramatically impact our number. No one knows what the future contingency reserves will be.

Labor stated that evidence indicates that the Department underestimated the Accident Fund and overestimated the Medical Aid Fund. Making adjustments to balance the funds now appears reasonable.

Business stated the department needs to solve problems with the rate class, and then asked what the expected rate would have been if the Department had made its time loss goal?

Bob stated that was a good question. We would like to inform employers that wage adjustments are built into and automatically implemented in other systems. In Washington, however, we have tried to keep up with wage inflation.

Remark from the audience: Our claimant wage calculations are not reflective of what is going on in the real world.

Bob stated the issue of wage calculation requires legislative attention. There is nothing we as a committee can do to effect change. We need to work together to come up with a simple way to deal with this controversial issue.

2004 Oregon Rate Study – Bill Vasek

Bill informed the committee that the 2004 Oregon Rate Study, which is carried out by the Oregon State Department of Consumer and Business Services, would be available after Thanksgiving. This study is produced every two years and attempts to compare its rates with other states, including Washington. He explained that Washington's rates cannot be compared identically with other states, because Washington's workers' compensation premiums are calculated on the basis of the number of hours worked by an employee. This method is unique to Washington; all other states calculate premiums based on dollars of payroll. He explained that the Study reports on the 50 largest Oregon risk classes out of approximately 400 and pointed out that the average premium rate per state in these 50 risk classes as presented in the study assume: 1) an experience factor of 1.000; 2) the same mix of payroll as Oregon for these risk classes; and 3) no credit, debit, discount, dividend, or retro fund. He discussed the 14 notes at the end of the report help explain some of the qualifications and limitations of the data. In spite of the limitations noted, Bill advised the committee to see where Washington

falls in relation to other states. He anticipates the 2004 study to put Washington more in line with where we are now.

Basis of Premium Collection Study; Hours vs. Payroll; SB 6461 – Bill Vasek

Bill explained that the effect of changing the basis of premium rates from hours worked to payroll will affect small employers in a big way because past claims' experience has very little effect on their rate. Large employers, on the other hand, will hardly be affected because their rate is mostly based on past claims' experience. Changing premium bases can affect premium rates as follows: 1) when lower than the class average wage employers, rates will decrease; 2) when higher than the class average wage employers, rates will increase. Therefore, small employers with high wages will see their rates increase sharply.

Business asked if discounting rates by employer size had any effect?

Bill stated that in Washington State, unlike many other states, administrative costs are so low that it doesn't make sense to discount based on the size of the employer. Bob Malooly stated that this is an issue requiring legislative action.

Labor stated that regardless of how the premium is charged, the aggregate amount of money would be the same.

Bill said the burden is merely shifted from one size of employer to another.

Business asked if we are aware of how other states have different risk classes based on wages.

Bill responded that some states have high-wage classes and low-wage risk classes.

The self-insured employers' representative stated that considering the risk, some self-insured employers pay disproportionately high premiums.

Spinal Cord Pilot Study – Will Hollingworth, University of Washington

Dr. Hollingworth, the lead investigator on the Spinal Cord Stimulator ("SCS") project, was introduced to the committee. He began with a description of the project's background and explained the study's purpose is to 1) determine the percentage of workers' compensation claimants who show improvement with implementation of the spinal cord stimulator implantation; 2) compare the data with claimants receiving either usual care or multi-disciplinary pain clinic treatment; 3) estimate the cost of medical care and time loss to the Department in both the spinal cord stimulator and comparison groups; and 4) describe types of complications associated with the spinal cord project.

Dr. Hollingworth stated that the study adheres to strict exclusion criteria and is only offered to claimants with the best chance to return to work. He expects recruitment to begin in October 2004. At the conclusion of the study the pilot is expected to provide responses to the following questions:

- Is pain improvement in injured workers comparable to the existing literature?
- Are pain, function and need for medication better in the SCS than the comparison groups?
- Compare return-to-work rates in SCS, pain clinic and usual care groups
- What is the frequency and cost to Washington State of SCS revisions and complications?
- What is the overall cost of SCS implantation after 18 months?

Labor asked why self-insureds are not included in the pilot study?

Bob responded that we thought the pilot would be more controllable if candidates were selected from the State Fund, but we can take a look at self-insureds to see if it would be practicable. Dr.

Hollingworth added that it would be easy to add the self-insureds on the telephone calls portion, but he expected it would be harder to get information from the self-insurance providers. Dr. Franklin further added that we want to examine this question closely. It is difficult to get data regarding self-insured cases.

Labor questioned whether there would be a sufficient number of candidates for this study.

Dr. Hollingworth stated that the study hoped to recruit one person each week.

Claims Scoring and Reserving Procedures – Bob Malooly

Bob stated that the Department is considering soliciting a request for proposals to score workers' compensation claims as they come in the door. The RFP would be looking for a tool that could be customized for Washington, the cost would be per claim, and due to limited L&I resources, would not involve programming.

Labor asked what the criteria of such an RFP would be and how would it be evaluated? Are skills shortages driving this initiative?

Bob said he expected the algorithms behind the scoring tool to be proprietary. The expected turnaround would be fast (i.e., overnight). We are optimistic that this tool will assist the Department in handling our claims better. He guessed that most cases would fall in the middle. With high scoring (troublesome) claims we would follow-up more closely by making sure the claim is appropriate or perhaps refer it to an investigator. We are hopeful this tool will help us deal with declining experience on the claim floor and assist us by better using our experienced folks. Our salaries are 40% below market, so it is hard to keep good people. Sandy Dziedzic stated that the Department would soon have a shortage of Level 3 employees on the claims floor. The problem with the in-training program was that we were moving staff too fast. Staff did not receive the experience they needed. We are now carefully progressing staff from apprenticeship. We are consistently looking for ways to develop team approaches. We are staffing nine to 12 adjudicators in each unit, and these teams will have a Level 3 to mentor the Level 2s. Rather than create another unit like Unit N, we plan to start in mid-October to go around the state adding more team approaches. Movement of caseloads and adjudicators will not be minimized. Every change will be examined to ensure it makes good business sense.

Bob Malooly said the department is looking at ways to deal with small employers more efficiently. A part of this effort concerns education, which will enable small employers to make good business decisions for themselves and for the injured worker. This is especially important for companies with their first claims.

Legislative Proposal to establish a clinical quality improvement committee — Gary Franklin

Dr. Franklin explained that a clinical quality improvement committee is needed to advise the Department on appropriate and effective care for injured workers and crime victims. This committee is needed to provide advice on the development of practice guidelines, conduct peer review, review of coverage decisions and technology assessments, review of medical programs, review of rules pertaining to health care issues. He stated that up until 2002, the Washington State Medical Association ("WSMA") worked successfully with the Department to offer policy level advice according to authority in WAC 296-20-01001. At that time, the WSMA shifted its Industrial Insurance Committee function into the Interspecialty Council, a non-voting body. While some guideline development activity continued, all other policy advisory functions ceased at that time.

In May 2004, the WSMA Board voted to terminate its direct involvement in the Department's guidelines development process. Functionally, what that meant to the department was that WSMA no longer would serve the function of policy advisor on medical issues. The Interspecialty Council, which is driven heavily by legislative issues, is not a decision-making council, so the Department no longer has a medical quality committee able to advise the Department on medical policy issues.

Labor stated that in order to support this proposal assurance of independence and the highest level of the expertise must participate in the decision-making of the proposed committee.

Dr. Franklin agreed that expert professionals were required to advise the department, and that it was the Department's intent to recruit the best available people for this effort. He also advised that there are two reasons to adopt this new committee in legislation: 1) in the absence of a State Medical Society sponsored Industrial Insurance Committee, it will be important that the new clinical quality committee's advisory function have clear authority, and 2) reimbursement of committee members will be important to the success of the committee. He invited the committee to call him at any time if they have questions. Suzanne Mager also offered committee members to contact her if she could assist in any way.

Board of Industrial Insurance Appeals Update – Tom Egan

Tom stated his statistics indicated there were no surprises and provided a brief summary of the following graphs:

- *Appeals Filed and Granted by Month:* Compared to last year, total appeals were lower.
- *Total Industrial Insurance Appeals Filed:* The BIIA is averaging about 1,000 appeals a month.
- *Department Reassumption Rate by Quarter:* The reassumption rate continues to trend downward.
- *Quarterly Agreements and Dismissals:* Dismissals are nearly the same as agreements.
- *Affirmance Rate by Month – PD&Os and D&Os:* The State Fund affirmance rate in June 2004 were around 64%, whereas the Self-Insured affirmance rate was at 45%.
- *Average PD&O Lag-time by Quarter for Hearing Judges:* The lag time is averaging around three weeks.
- *D&O Time-Lag by Quarter:* Decision and order time-lag decreased during the last quarter.
- *Quarterly Average Weeks to Completion:* The Board's goal of 35 weeks from date filed to date of final order is currently being met.
- *Pending Appeal Caseload by Quarter:* The June 2004 caseload of active appeals was nearly the same as March 2004.
- *Final Orders Appealed to Superior Court-Quarterly:* Final orders appealed to the Superior Court are still low.

Wrap-Up – Bob Malooly

Bob stated that he expected to provide the committee a first draft of the request for qualifications and quotations for actuarial review in approximately two weeks. He next directed the committee to a list of proposed 2005 meeting dates and asked each member to confirm these dates were acceptable. The proposed 2005 dates were:

Proposed 2005 Dates*	Time	Tumwater Location
Monday, March 28, 2005	9 a.m. to noon	S-118 & 119
Monday, June 27, 2005	9 a.m. to noon	S-117 & 118
Monday, September 26, 2005	9 a.m. to noon	S-118 & 119
Monday, December 5, 2005*	9 a.m. to noon	S-118 & 119

The meeting adjourned.

****Due to a scheduling conflict for several committee members on December 5, 2005, this meeting was rescheduled to Monday, December 12 in Tumwater.***